

IN THE TRADE DISPUTES PANEL)
OF SOLOMON ISLANDS.)

Case No: L9/9 of 1996

IN THE MATTER of the Trade
Disputes Act 1981

AND IN THE MATTER of a Referral
of a Trade Dispute

BETWEEN: SOLOMON ISLANDS PUBLIC
EMPLOYEES UNION
Applicant

AND: PRIME MINISTER'S OFFICE
Respondent

Inquiry: 30th May 1996.

Decision: 31st May & 13th August 1996.

Panel: A. N. Tongarutu - Chairman
C. Karaori - Employee Member
J. Korinihona - Employer Member

Appearances: C. Waiwori, for the Applicant
K. Beia, for the Respondent

FINDINGS

On April 18, 1996 the Solomon Islands Public Employees Union (hereinafter referred to as the union) gave notice of a trade dispute between itself and the Prime Minister's Office (hereinafter referred to as the employer). The union in this case represents its members who are employed as customs, immigration and quarantine officers. They claimed entitlement to danger allowance by virtue of their posting to the Shortland Islands. The referral is encouched in the following terms:

- "(1) That the respondent pay \$60.00 per day to Public Officers, hereinafter referred to Custom Officers, Immigration Officers, and Quarantine officers posted at the boarder line between Solomon Islands and Papua New Guinea, and other officers who previously deployed at the Boarder.
- (2) That the danger allowance of \$60.00 per day is to be made retrospective to, and at the time of the conflict."

The union claimed that negotiations on this log of claim between the parties commenced in June 1995 and had reached a deadlock. The crux of their claim is that danger allowance is payable to these officers because they are posted in a conflict zone and their duties include combined patrol with police field force (PFF) officers who are paid danger allowance of \$60.00 or \$50.00 daily. It was submitted on behalf of the officers that in January 1995, three(3) years after the commencement of the border crossings, these civilian officers raised their claim on danger allowance with the appropriate authorities but were unsuccessful. Reference was made to several

correspondence between the parties. A list of employees submitted showed nine officers posted to the Shortland Islands on either permanent or relief basis. Evidence from an assistant immigration officer who was posted to the Shortlands since March 1994 showed that in cases of illegal crossings, he would accompany PFF officers on their patrol runs. Customs officers normally accompany them only if there was a matter which they needed to deal with. Whilst PFF officers would be fully armed, he was not. There is no extra measures taken by SIG to ensure that his life is not at risk. Part of his routine duties included patrolling of villages to check if villagers are harbouring immigrants. On one such occasion they sighted PNG rayboats trespassing into Solomon Islands waters. This involved a shootout at Harapa. Patrolling of the common border by customs, quarantine and immigration officers occurred before the Bougainville crisis. None of these duties were delegated to PFF officers under the crisis situation.

The employers contends that the officers claim is unjustified for the reason that the officers, being civilians, are not actively involved in the border conflict. Danger allowance is only paid to those who are engaged in tasks of a dangerous nature and not to officers who are posted in a dangerous environment. Their case is premised on the provision of "Danger Money" under the General Order F2302. This provision reads as follows"

"An Officer with the approval of the Responsible Officer, may be paid an allowance of 25¢ an hour for undertaking tasks of a dangerous nature. Tasks attracting such allowance shall be as advised from time to time by the Permanent Secretary for the Public Service".

Mr. Beia argued that this definition concentrates on tasks of a dangerous nature and had nothing to do with a dangerous environment. Compared to the tasks of the PFF officers who are expected to protect civilians and to patrol the common border, these civilian officers duties differ in that they are not entrusted with the duty to protect lives. This is the distinction raised in his argument. If this provision is applied to environmental danger it would have wider repercussions. For instance, nurses working in the T.B. Ward may claim danger allowance. If Solomon Islands Government declared it as a war zone, all civilians would be repatriated. Whilst the Border zone may be a dangerous area, a declaration to this effect has not been made by Solomon Islands Government. This provision does not cater for environmental danger, only for engaging in tasks of a dangerous nature.

The Panel concurs with the argument of the employer party in that the usage of the word "task" limits the application of this provision to engagements in dangerous occupations. The tasks of immigration, customs and quarantine officers are not dangerous in nature and therefore are not entitled to danger allowance under GO F2302. In contrast to this approach is the Panel's Findings in the trade dispute case of Solomon Islands Government -v- Solomon Islands Para-Medical Association (L9/18/91) where members of the Association claimed danger allowances for duties performed by the staff employed in the eight divisions namely Pathology, Physiotherapy, Dental, Pharmacy, Radiology, Health Education, Entomology and Environmental

Health. They claimed that the duties they were engaged in were both dirty, risky and dangerous and that the employer to award all members of the Association a fifty (50) percent allowance of their basic salary across the board to be backdated to 1989.

On the issue of danger allowance the employer's argument was that there was no basis for the Association's claim in that the General Orders which embody the terms and conditions of service provide for danger allowances when undertaking tasks of a dangerous nature. Emphasis was placed on the usage and meaning of the word 'dangerous' as defined in the Oxford Dictionary and the nature of duties performed by members of the Association did not therefore qualify them under its definition. The Panel however found that these employees were engaged in occupations which could endanger their health and lives and were eligible and entitled to draw the danger allowance as stipulated in the General Orders which was that of twenty five cents (25c) an hour.

In the Panel's assessment, the tasks undertaken by these civilian officers in their ordinary course of duties are not tasks of a dangerous nature and would therefore not be eligible for the hourly daily allowance stipulated in the General Order. By contrast, the duties performed by PFF officers are dangerous in nature. They are entrusted with the duty to patrol the common border and to protect the lives of civilians. In recognition of their duties they are paid an allowance over and above the rate stipulated in the General Order. It is important to note that the allowance paid to the PFF officers is over and above the rate stipulated in the GO. The principle embodied in GO F2303 must also apply to these civilian officers when duty calls for them to patrol the common border with or without PFF Officers. In this sense, these officers when required to perform such duties must be fairly remunerated for engaging in tasks of a dangerous nature.

The issue of environmental danger cannot be ignored in the case. The spillover effects of the Bougainville Crisis has changed the working environment from that of normal to a tensed environment the effects of the crisis. Even under these circumstances these civilian officers were expected to participate in **"patrol duties with PFF Officers"** and in so doing placing their lives in danger. The duties of these civilian officers are provided for by legislation. Immigration officers for instance have powers of arrest similar to police officers. The Immigration Act empowers them to arrest without warrant. Customs officers have powers of seizure whilst quarantine officers do not but they have powers to board a vessel for inspection. In a tensed environment such as the border, zone how would they be expected to perform their duties faithfully without fearing for their safety. On the argument against environment all danger guidance must be sought from the Safety at Work Act 1982 which provides employers obligations towards its employees. Section 4 of the Act provides:

"General Duty of Employers to their Employees.

- (1) It is the duty of every employer to ensure, so far as is reasonably practicable, the health and safety at work of all his employees.

(2) Schedule 1 contains examples of the duty imposed by this section".

Relevant to this case is paragraph 5 of Schedule 1 which stipulates;

"Safe working environment

It is the employer's duty to provide and maintain a working environment for his employees that is, so far as is reasonably practicable, safe and without risks to health."

This provision imposes a duty on the employer to provide a safe working environment at the workplace. In cases where maintaining safety at the workplace is beyond the employer's control then a prudent employer would be obliged to pay monetary compensation.

The Panel unanimously decided that these civilian officers are entitled to danger allowance when they are actively participating in patrol duties but differ on the percentage payable. The minority decision is for these officers to be paid danger allowance similar to PFF officers. In view of section 6(4) of the Trade Disputes Act 1981, the minority decision is likely to have a 'floodgate' situation.

"(4) The panel shall, in considering what award to make in any trade dispute, take account not only of the interests of the parties to the dispute but also of the likely effect of the award on other persons and on the economy as a whole".

The majority decision is for these officers to be paid twenty percent (20%) of the minimum daily allowance paid to PFF officers.

Award

The majority award of the Panel is that the immigration, customs and quarantine officers posted to the Border zone are entitled to a danger allowance being twenty (20) percent of the minimum daily danger allowance awarded to PFF Officers posted to the border zone when they are patrolling with PFF Officers and that this allowance is to be backdated to January 1995.

Appeal

The appeal provisions in the Trade Disputes Act 1981, apply to this Findings.

Panel Expenses

Pursuant to s.11 of the Trade Disputes Act 1981, both parties are to pay to the Ministry of Justice and Legal Affairs the sum of (\$50.00) dollars each being for Panel expenses within 14 days of receipt of this Findings.

On behalf of Panel

A. N. Tongarutu
CHAIRMAN/TRADE DISPUTES PANEL